

Senate Bill 136

By: Senators Douglas of the 17th, Rogers of the 21st, Chance of the 16th, Staton of the 18th, Hawkins of the 49th and others

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
2 general provisions pertaining to penal institutions, so as to require the Department of
3 Corrections and the State Board of Pardons and Paroles participate in the United States
4 Immigration and Customs Enforcement Rapid Removal of Eligible Parolees Accepted for
5 Transfer (REPAT) Program or similar federal deportation program; to provide for legislative
6 intent; to provide for definitions; to provide for release on a reprieve; to provide for an
7 expedited procedure for the deportation of certain alien prisoners; to provide for waiver of
8 a violator's extradition; to amend Code Section 42-9-43.1 of the Official Code of Georgia
9 Annotated, relating to citizenship status of a prisoner and deportation, so as to authorize
10 conditional deportation parole release; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 It is the intent of the General Assembly to ensure that alien prisoners subject to deportation
15 are not released from prison into the Georgia community. It is further the intent of this
16 legislative body to reduce the costs and expenses of operating state prisons by reducing the
17 number of alien prisoners incarcerated in the Georgia penal system and to expedite the
18 deportation process of such prisoners. Moreover, Georgia should support the rearrest and
19 revocation of parole of any alien prisoner who reenters the United States in violation of a
20 release on a reprieve with a detainer to United States Immigration and Customs Enforcement.
21 The General Assembly intends to require state agencies to take part in the Immigration and
22 Customs Enforcement Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT)
23 Program funded and operated by the United States government and take all measures to fully
24 cooperate and communicate with state, local, and federal agencies for the implementation of
25 such program.

SECTION 2.

Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to general provisions relating to penal institutions, is amended by adding a new Code section to read as follows:

"42-1-11.1.

(a) As used in this Code section, the term:

(1) 'Alien prisoner' means a person who is not a citizen or national of the United States who is serving a sentence under the supervision of the department.

(2) 'Board' means the State Board of Pardons and Paroles.

(3) 'Department' means the Department of Corrections.

(4) 'Release on a reprieve' means being released on a reprieve with a detainer to United States Immigration and Customs Enforcement.

(b) The department and board shall establish a process and agreements among multiple state, local, and federal agencies for the implementation of the United States Immigration and Customs Enforcement Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) Program or similar federal program, by whatever name, for the purpose of deporting alien prisoners in the state prison system who are eligible for deportation.

(c) The department shall include as a part of the intake process a procedure to identify alien prisoners eligible for deportation. The department shall coordinate with the federal authorities to determine an alien prisoner's immigration status and eligibility for removal. The identity and information regarding alien prisoners eligible for deportation shall be provided expeditiously to the board, and the board shall then consider such alien prisoner for a release on a reprieve. Alien prisoners who would otherwise be ineligible for parole shall not become eligible by reason of eligibility for a release on a reprieve.

(d) Upon an alien prisoner's acceptance into the federal deportation program, the board may establish a tentative release month for the alien prisoner to be transferred into federal custody.

(e) No tentative parole release month based on a release on a reprieve shall be set until the alien prisoner is otherwise eligible for parole. No tentative parole release month shall be set for any date prior to the effective date of a final deportation removal order.

(f) The board shall provide notice and obtain acknowledgment in writing that notice was given to each alien prisoner who is eligible for a release on a reprieve that illegal reentry into the United States shall subject such alien prisoner to being returned to the custody of the department to complete the remainder of his or her court-imposed sentence. Prior to granting a release on a reprieve, the alien prisoner shall make a knowing, voluntary, and intelligent waiver in writing of all rights of extradition which would challenge the alien prisoner's parole revocation and return the alien prisoner to the department to complete the

remainder of his or her sentence in the event such alien prisoner violates a condition of the release on a reprieve.

(g) An alien prisoner shall not be eligible for a release on a reprieve if the federal authorities determine that the alien prisoner's removal is not reasonably foreseeable.

(h) The department shall maintain exclusive control and responsibility for the custody and transportation of alien prisoners to and from federal facilities."

SECTION 3.

Code Section 42-9-43.1 of the Official Code of Georgia Annotated, relating to citizenship status of a prisoner and deportation, is amended as follows:

"42-9-43.1.

(a) In determining whether to grant parole the board shall be authorized to make inquiry into whether the prisoner is lawfully present in the United States under federal law.

(b) If the board determines that the prisoner is not lawfully present in the United States, the board shall be authorized to make inquiry into whether the prisoner would be legally subject to deportation from the United States while on parole.

(c) If the board determines that the prisoner would be legally subject to deportation from the United States while on parole, the board may:

(1) Consider the interest of the state in securing certain and complete execution of its judicial sentences in criminal cases;

(2) ~~Be authorized to consider~~ Consider the likelihood that deportation may intervene to frustrate that state interest if parole is granted; and

(3) Where appropriate, ~~be authorized to~~ decline to grant parole in furtherance of the state interest in certain and complete execution of sentences.

(d) Any grant of parole to an alien prisoner, as such term is defined in Code Section 42-1-11.1, who is subject to deportation shall be conditioned upon the deportation of such prisoner pursuant to a final removal order and a further condition that such prisoner abide by the deportation order and all immigration laws of the United States."

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.